

MINUTES
REGULAR MEETING OF BOARD OF LAND COMMISSIONERS
August 21, 2006, at 9:00 a.m.
Room 303 State Capitol Building
Helena, Montana

PRESENT: Governor Brian Schweitzer, Attorney General Mike McGrath, State Auditor John Morrison, Secretary of State Brad Johnson, and Superintendent of Public Instruction Linda McCulloch

Mr. McGrath moved for approval of the minutes from the July 17, 2006, meeting of the Board of Land Commissioners. Seconded by Mr. Johnson. Motion carried unanimously.

BUSINESS CONSIDERED:

406-11 LAND BANKING: FINAL APPROVAL FOR LAND BANKING PARCELS
CUSTER COUNTY (Benefits: Common Schools)

Mary Sexton, DNRC Director, said this is a request for final approval for land banking parcels in Custer County. In May 2005, the Board approved seventeen isolated, lessee-nominated parcels for 9,585 acres. On April 19, 2006, the Board set the minimum bid for the parcels, and on August 8, 2006, the Custer County parcels sold at public auction. All the parcels were purchased by the existing lessees and were sold for the minimum bid amounts. The lessees have entered into purchase agreements with the state and the closing will be completed within 30 days. Consideration for the final approval by the Board for the land in Custer County concludes our involvement with the extensive public process which was developed through the land banking program. These parcels bring a successful conclusion which has lasted over 20 months. The total revenue from the sale is \$1.4 million, for 9,585 acres. Ms. Sexton recommended approval of the sale of the Custer County parcels.

Governor Schweitzer said I have a question and its not a question that has a yes or no answer. As I look at these sales we are proposing, I see that the number we selected was the number everyone agreed upon and we went forward. My concern is that any real estate deal that begins with a "yes" on both sides is a bad real estate deal. I think we just have to be vigilant in choosing a high enough number as our minimum bid. If we have a large number of minimum bids and they are all a "yes" it could potentially mean we haven't asked enough money. We wouldn't know that until we have somebody who says that's too much I'm not willing to pay it on parcel #2 or #9. As a cautionary note, it is very difficult in an inflationary environment to choose a value of a property because by its very definition when we appraise property it is based on prior sales, which are all in the rear view mirror. Montana land has been inflating at a very fast rate and it is very difficult to keep up. In some of these rural counties there are not a lot of land sales. In order to get a comp we might be four or five counties over and it might have been 18 months ago, in order to get five or six comparable values. My caution for all of us is to choose as high a minimum bid as we think we can take. I know some of these folks were concerned we added \$50 because of easement. Is that correct?

Ms. Sexton said that is correct because it was appraised as if we had access.

Governor Schweitzer said and there wasn't access but they paid the premium anyway. There was a little squawk but they paid. So I think we just have a responsibility to get the maximum amount.

Motion was made by Mr. Johnson to approve the sale. Seconded by Mr. McGrath. Motion carried.

806-1

LAND BANKING: RE-AUTHORIZATION OF LAND BANKING PROGRAM

Ms. Sexton said in the 2003 Legislature HB 223 was passed which developed the Land Banking Program as a pilot project. To date, 118,000 acres have been nominated for sale and the Board has approved 26,000 acres to continue through the Land Banking process. The sale tracts total 19,510 acres and sales are expected to generate about \$10.7 million in this first go-round. Action must be taken in the upcoming session or the law will sunset during FY 2008-09. In this reauthorization we are suggesting changes to §77-2-363, MCA. The first would be to change the sunset date from October 1, 2008, to October 1, 2011. This would allow land banking to continue as a pilot program. Bid deposits would be received 20 days rather than 45 days prior to the auctions. DNRC has received several comments that this requirement is onerous when trying to secure loans. Another change would be the bid bond amount be 20% of the minimum bid rather than 50%. The final change is in preparation for state trust lands for sale it requires an appraisal, cultural survey, land survey, and advertising. These are contracted by the department in preparation for the sale and the costs are borne by the applicant at closing. This provision provides for the collection of the private funds prior to incurring the costs and credits the lessee or purchaser at closing. This also covers the instance where the lessee decides, which is the option in the Land Banking rules and statutes, to withdraw the nomination. They would still have to pay for the expenses the department incurs including the appraisal, cultural survey, land surveys, and advertising. This is the reason for the last change. There are four proposed changes to the statutes regarding land banking. Ms. Sexton recommended the reauthorization of land banking at the request of the Board during the 2007 legislative session. The proposed bill is attached and reflects these changes.

Motion was made by Mr. Morrison to adopt the reauthorization request for land banking. Seconded by Ms. McCulloch.

Mr. Morrison said my understanding is the sunset provision proposed in this action item is three years.

Ms. Sexton said that is correct.

Mr. Morrison said I would like to discuss whether five years would be an acceptable sunset period or if three is necessary.

Governor Schweitzer said let's make a motion on this proposal and during the discussion we can decide to modify if we need to.

Mr. Morrison said my motion is to adopt the reauthorization with the exception we set the sunset date of 2013 instead of 2011. Ms. McCulloch seconded the motion.

Governor Schweitzer asked why 2013 as opposed to 2011? What's the reason?

Mr. Morrison said a five-year sunset period is more conducive to being predictable in long range planning for acquisitions and dispositions and I'm concerned that three years might interfere with some of that planning. Ms. Sexton what are your thoughts relative to three versus five?

Ms. Sexton said we have had a five-year window at this point in time, from 2003 to 2008, however, it took us a good two to three years to develop rules and to get the first "go-round" off the ground. We are now up and running so we have the advantage of having the rules set, having the statutes set, and having experienced what some of the glitches might be. So, therefore, we are proposing these changes. I believe

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we do have a viable program that is up and running and am not sure what the difference might make between 2011 and 2013.

Mr. Morrison said we sent out letters to 40+ conservation groups about the renewal. We had no negative responses. Essentially we said in the letter, let us know if there are any problems that need to be addressed in the renewal of the land banking program. These were groups that were involved in one way or another in the first development of this project and the one response we got back was a positive response from Hank Goetz of the Blackfoot Challenge, saying we think it is a great program. I think a five year sunset date will give the program a greater long range stability but I am also not committed to that either.

Mr. McGrath said I'm concerned about extending it an additional two years. The 2011 date is five years from now, and now that we are up and running it isn't going to take all the lead-in time it took to get to where we are today. I think we have to be extremely cautious on this entire program and make sure when we're talking about sale of public lands that we do it right and we have certain limits on that. I am a strong believer of land banking and how it works and the potential for what it can do. I am a little nervous about long term potential and we have to be careful. My preference would be we extend it to 2011 as the legislation is currently drafted. With that, I would support it.

Mr. Morrison said I will withdraw my motion and re-move that we adopt the reauthorization of land banking as stated with the sunset date of October 1, 2011. Seconded by Ms. McCulloch. Motion carried unanimously.

806-2 LAND BANKING: PRELIMINARY APPROVAL ACQUISITION OF LONE PINE TRACT IN FLATHEAD COUNTY (Benefits: Common Schools, State Industrial School)

Ms. Sexton said this is seeking preliminary approval for a land banking acquisition. The first auctions for trust land occurred in June with the closing dates in July and August, other auctions will be scheduled in October. We can only sell 20,000 acres prior to acquisition of replacement property and we brought before the Board last month a number of parcels for preliminary approval for acquisition. The sale of these tracts totals 19,000 acres, split mostly between common schools and the state industrial school. We have a set of selection criteria that was utilized and we had public involvement in the acquisition process. What I am bringing to you today is the Lone Pine parcel in Flathead County. We did sell a residential piece north of Kalispell and another piece in Flathead County. This was nominated by Fish, Wildlife, and Parks, is a parcel adjacent to Lone Pine State Park just outside of Kalispell. There is timber on this parcel as well as recreational opportunity. We have visited with FWP and if this parcel is successful through the process we will enter into a lease with them at a lease rate around 3.5% with an option for an easement on this parcel through FWP. Ms. Sexton said this is a win-win situation. The asking price is \$550,000 and the overall rate of return is estimated at 2.39%. There is timber potential as well as recreational potential, being right next to Lone Pine State Park. In an increasingly populated area such as Flathead County having open space and open lands is a sought-after commodity. Ms. Sexton recommended approval of the acquisition of the Lone Pine parcel in Flathead County.

Motion was made by Ms. McCulloch to approve the acquisition of the Lone Pine parcel. Seconded by Mr. McGrath. Motion carried unanimously.

806-3 LAND BANKING: PRELIMINARY APPROVAL FOR SALE OF PROPERTY IN
PARK COUNTY (Benefits: Common Schools)

Ms. Sexton said this is for preliminary approval of land banking parcels #374 and #375. There are two isolated, highly-valued land banking parcels totaling 12,070 acres near Livingston in Park County. The value of the property being evaluated for acquisition of high value parcels and is between \$300 and \$13,000 per acre. This is the preliminary approval request. We did send out a letter soliciting comments as part of the EA process explaining the land banking process. It was sent to interested parties in April 2006. Legal notice was also published in the *Livingston Enterprise*. We did receive public comment on this parcel with some concerns expressed regarding the potential for development of adjacent private lands and the value of this parcel for wildlife habitat. We requested of the surrounding landowner and the current lessee of this parcel a response to these concerns, and they are included in the Board's packet. Mr. Dokken's letter is included and discusses his intention to develop a road and an observatory to serve a development on adjacent private lands, and his intent to place a conservation easement on about 1,000 acres of the state land. Any future development would be regulated by applicable state, local, and federal regulations. There is a checklist and a map of the two parcels in your packet. One parcel is isolated, the other does have an adjacent landowner. It is the department's recommendation that the Board consider this for preliminary approval. We will then go through the remainder of the process.

Joe Mazurek, Crowley Law Firm representing Wade Dokken and his project Ameya Preserve, Inc., said the first thing I'd like to say is when I served on this Board we talked a lot about land banking and never got it done. I congratulate you for what you are doing. We've worked very closely with the staff and your representatives. We think we have addressed all the problems with letters that came into the department, we met for about two hours with Garry Williams (DNRC) and worked out his concerns. I would ask if you have questions about the project, Wade Dokken is here and he can answer any questions.

Mr. Morrison moved to adopt 806-3 for preliminary approval for sale of property in Park County. Seconded by Mr. McGrath.

Mr. McGrath said looking at the map, I want to make sure I am clear on the nature of these parcels. One, Section 18, is definitely an isolated parcel. The second one, Section 20, is a parcel that abuts private land. But as I understand it, there is no public access. It's a private landowner who does not allow public access so we're not talking about sections of state land that currently have public access.

Mr. Mazurek said that's correct. Although if you look at the project Mr. Dokken has a considerable number of public opportunities for hunting and other activities.

Mr. McGrath said I appreciate that and that is my point. In the current situation we don't have a lot of public access but if we eventually go along with this it may increase the public's access in this area. And you're also talking about a conservation easement back in some of the higher ends of this? Where were you talking about this?

Wade Dokken, Ameya Preserve, Inc., said our plans are to put somewhere in the vicinity of 90% of the entire parcel, which is 11,000 acres counting the state sections, into open space or a conservation easement.

Mr. McGrath said at this point I suppose you haven't identified what parcels? I am trying to get a sense of ...I know you're interested in some parts of this development in allowing some public use and I'm trying to get a sense on the map where you might do that.

Mr. Dokken said if you look at the southeast corner of Section 20, its almost at the very southeast corner, we are going to build an observatory, it will be the largest telescope in Montana. How we got to that size is very simple. One of the astronomers at MSU has been chosen as one of the 50 astronomers in the world to be part of the Earth Shine Project which is studying the light reflected off the earth onto the moon and back as part of the study on global warming. They knew how large the telescope was in Missoula so they decided to be four inches larger. Anyway, they have noted that the SE corner is the best spot on the entire 11,000 acres to place the observatory.

Mr. McGrath said in effect your project could result in enhanced public access.

Mr. Dokken said oh, they will, it will be open to the public. MSU, in exchange for us building the observatory, has agreed to host people two to three days per week there.

Mr. Johnson said I am assuming the department appraisal will narrow the differential of \$300 - \$13,000. It seems like a rather wide range.

Tom Schultz, DNRC Trust Land Management Division Administrator, said if you read the agenda item, its talking about the lands we are acquiring. This land down there is valued at the range of \$1,500 and \$3,000 per acre. The agenda item is actually referring to the lands we would acquire, that's why you saw that range.

A vote was taken on the motion on the floor. Motion carried unanimously.

806-4 ~~ACCESS ROAD POLICY AND RECIPROCAL ACCESS AND EASEMENT POLICY~~
A. ~~Access Road Easement Policy~~
B. ~~Reciprocal Access and Easement Exchange Policies and Procedures~~

Ms. Sexton said this has been withdrawn. The department is currently working on some model deeds. Many of our cooperators and other interested parties suggested that when we move forward with this policy that we have some model deeds in place. We are also looking at further defining public access and activities. We will be back next month with a further refined access road policy and reciprocal access and easement exchange policy.

806-5 LEWIS LIMITED ACCESS TIMBER SALE
(Benefits: Common Schools)

Ms. Sexton said this is out of the Lewistown Unit office, about 15 miles south of Lewistown. It is a small limited access sale of 308,000 board feet. There will be no old growth harvested out of the harvest unit of 32 acres. We have gone through the public involvement process and no comments were received in response to scoping during the MEPA analysis.

806-6 LEMHI PASS TIMBER SALE
(Benefits: Common Schools)

Ms. Sexton said this second proposed timber sale is out of the Dillon Unit about 19 miles west of Grant. The estimated sale value is 350,000 board feet. The sale contains five harvest units in 48 acres. This

currently has suppressed growth due to overstocking with heavy infestations of dwarf mistletoe and mountain pine beetle in the lodgepole and also bark beetle in the Douglas fir. There is some old growth involved with this. There are old growth restoration treatments in approximately seven acres of the sale which will meet the old growth definition. There were some comments during the public involvement and mitigations have been put in place regarding big game habitat. The harvest prescriptions were designed to minimize impacts to big game. For wildlife corridors there will be no human development that could decrease linkage value; and regarding the increased ATV traffic, there will be consideration for closing skid trails. This project is not visible from any populated area. Ms. Sexton recommended approval of both proposed timber sales.

Motion was made by Ms. McCulloch to approve both the Lewis Limited Access Timber Sale and the Lemhi Pass Timber Sale. Seconded by Mr. Morrison. Motion carried unanimously.

806-7 REQUEST FOR APPROVAL OF COMMUNITIZATION AGREEMENT
By J. Burns Brown (Benefits: Common Schools)

Ms. Sexton said this is for 320 acres in Hill County, for the Gwynn well which is an Eagle Formation gas well. The spacing unit has a total of 320 acres, the department owns 160 of these mineral acres. The department's tract comprises 50% of the communitized area and it will receive the proportionate amount of gas production (.6.25%) from this well under the communization agreement. Ms. Sexton recommended approval.

Motion was made by Mr. McGrath to approve the request for communization agreement by J. Burns Brown. Seconded by Mr. Johnson. Motion carried unanimously.

806-8 RIGHTS-OF-WAY APPLICATIONS
(Benefits: Common Schools, MSU Morrill, School of Mines, State Normal School, Public Buildings)

Ms. Sexton said there is one application for rights-of-way I would like to have segregated. It is the first historic county road for Ravalli County. The Bugli's from Ravalli County are here today and we have also just spoken with the Ravalli County Commissioners. This is a request from the Ravalli County Commissioners for an easement. However, the Bugli's, and by phone the Ravalli County Commissioners, would like to reduce the feet in the width of the road so the easement itself would be reduced from 60 feet to 30 feet. Part of this road is on a section line which would give the state only half, and the parcel which is wholly on state land would be just a 30-foot purchase of easement, which is allowed under our rules. I would like to suggest that, pending written confirmation from the Ravalli County Commissioners and we've spoken with them on the phone this morning, this particular application be approved at a reduced amount pending written confirmation from the Ravalli County Commissioners. When we do receive that confirmation, this would be reduced to a 30-foot right-of-way on two strips of land that goes through state land for a county road. This would be the McIntyre Road and the South Sunset Bench Road. For the Bugli's particularly there is some urgency in this for business matters. I would suggest the Board approve this contingent upon confirmation that the footage be reduced.

The other applications this month are #13618, 13619, 13620, and 13621 from Beartooth Electric Cooperative for an overhead electric distribution lines; #13761 through 13785 are from 3 Rivers Communications for buried telephone cable; #13786 is from Montana-Dakota Utilities Co. for an

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overhead and buried electric distribution line; #13787 is from Central Montana Communications for a buried telecommunications cable; #13788 is from Triangle Telephone Cooperative for a buried telecommunications cable; # 13789 is from Powder River Energy Corp for an overhead power distribution line; #13790 is from the Montana Department of Transportation for highway construction and maintenance; and #13791 is from Ravalli County for public county roads known as McIntyre Road and South Sunset Bench Road.

Jeanne Holmgren, DNRC Real Estate Management Bureau Chief, said just for clarification, in speaking with the Ravalli County Commissioners, the South Sunset Bench Road may need to be 35 feet and the McIntyre Road 30 feet. So it could be up to 60 feet. We'll have to do some additional research to see if in fact there is a 25-foot easement for them on the other side. So if we could just go up to 60 feet, it could be 30 or 35 feet. The McIntyre Road would be 30 feet.

Motion was made by Mr. McGrath to adopt the right-of-ways, and for the specific r/w applicant Ravalli County (#13791), that the Board allow the department the discretion to grant a right-of-way up to 60 feet. Seconded by Mr. Johnson.

Governor Schweitzer said just so it lays out for everybody, again, what we have here is the normal compensation would be \$26,520 for a 60-foot easement the Ravalli County Commissioners have bought. The private individual has said I've got to have this and I am willing to pay it and then the easement would actually go to the county but would be paid by the private individual. But in the meantime, we're discussing the possibility of reducing the amount because it wouldn't be 60 feet. That's the issue here. We have a motion on the table that gives the authority to DNRC to negotiate a lower price for footage less than 60 feet. Would that come back to the Land Board for final approval?

Ms. Sexton said at this time if this is approved with this discretion, it would not come back for final approval.

Governor Schweitzer said that is the way the motion reads. Give me an idea of what these dollars and cents might be. Obviously this is a private negotiation with a public entity, but if it is \$26,520 for 60 feet is it half of that for 30 feet?

Ms. Sexton said I'm getting a yes from my staff. Again, we did just discover today that part of this actually is only half on state land and half is another private owner. So I think in the Ravalli County application there was an error in the application in that specific incident.

Mr. Schultz said the way this would work is you see the acreage there of 4.42 acres, we take a price per acre and multiply it times that area. So you have the length times the width. Theoretically, if you went 30 or 35 feet times the length of the road, the price would come down commensurate with the acres that are encumbered. I did some quick math here and it looks like we're somewhere in the range of \$5,000 to \$6,000 per acre. Depending upon how that acreage was affected, it would be \$6,000 times the amount of acreage we are granting the easement across.

Governor Schweitzer said and the width of county roads in Ravalli County routinely are?

Mr. Schultz said they are typically 60 feet. I think the issue at hand here is a claim made by the county that they may already own 25 feet as part of this, that's why the potential reduction across this. That's why the director indicated we need to do some research. There is a claim that the county may already

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own 25 feet of the right-of-way and we need to verify that. If they do then we would recommend reducing it to 35 or 30 feet whatever is necessary. But typically a county road is 60 feet.

Mr. McGrath said I thought I had this understood. The landowners are the people that are ultimately seeking this right-of-way and they are working with the county. Is that correct?

Mr. Schultz said yes. Mr. Schultz brought a map to show the Board the layout of the area. He said we are talking about two different roads, the McIntyre Road and South Sunset Bench Road. There is potential that the county has 25 feet of right-of-way on the road and the county wants to perfect access on both of these roads.

Mr. McGrath said so the issue is whether the county owns half of what we're trying to grant access to?

Mr. Schultz said yes.

Governor Schweitzer said I will vote against this motion and obviously the Board can vote how it wants. I would prefer we pass all of the rights-of-way applications except for the one from Ravalli County. Peel that out separately and wait until we have a negotiation brought back to the Board. I'll vote against this with the intention there will be another motion made that we peel it out and consider it separate, that we approve all of the other applications except for this one and wait until we see a negotiated settlement and decide yea or nay on what we see.

Mr. McGrath said I may be willing to change my motion but I understand the landowners are here. Maybe we could hear from them and get a sense of what the issue is.

Ms. Sexton said I want to add that we have in our rules that when we do historic rights-of-ways for counties we can do it for even 30 feet. It is allowed. The counties can come in and request right-of-way easement acquisition for 30 feet.

Jay Bugli, Stevensville, Montana, said I would think the resolution we have here in place to get this resolved would be more than reasonable. We worked a lot on this as the private landowners, Ravalli County has worked on it somewhat but their resources are somewhat limited. It seems to me this is very clear. I know you don't favor this or you're not in favor of approving this at this point in time. Is there something I can clear up?

Mr. McGrath said the issue here is there is some nervousness on the part of the Board that it would make some kind of final approval before there is a final resolution of what exactly it is granting. I am wondering what kind of a problem that would cause for you as a landowner if we wait until the next meeting until we make sure we have a final negotiation with the county over who owns what part of the road.

Mr. Bugli said you can't do this on a contingency?

Mr. McGrath said right now our proposal is to do it on a contingency. My question to you is would it cause some hardship for you as the landowner if we waited 30 days?

Mr. Bugli said I think time is of the essence here, yes. To wait any longer would not be in my benefit or any of the other landowners.

Mr. McGrath said and that is because you are in the process of selling a parcel or what?

Mr. Bugli said my business relies on the fact of borrowing a sum of cash, sometimes on a weekly basis. I have a helicopter operation, a repair station, and I do federal government contracts. In that business they loan on the value of my property. If I have a cloud on my property, this is going to become difficult for me to borrow money from my bank.

Mr. Johnson said I want to make sure I understand the process. What we're really talking about is first a question of fact finding. That is, does the county own or not own or has the county perfected or not a 25 foot right-of-way. If in fact that discovery says yes, the county has perfected that 25 foot right-of-way, I am not convinced the Board is in a position to force them to purchase another 25 feet. It would seem to me to be appropriate to reduce the width of the right-of-way by the width of right-of-way they have already perfected. If that is the case, then we are simply talking about arithmetic to determine the right-of-way fee. Is that correct?

Mr. Schultz said what they have perfected potentially is 25 feet on the adjacent private land. So when we are talking the full 60 foot width which is typically what a county right-of-way is, they may only need 30 – 35 feet on the state land because they may have perfected 25 feet on the adjacent private land. That is what we're talking about. How much do they need on the state land. If the 25-foot on the private land is not perfected, then they may want up to 60 feet on the state land. That's why we suggested the language of "up to 60 feet." If they have perfected 25 feet on the private land then they would need to come to us for 30 – 35 feet. That is the issue. We're not talking about fact finding on the state land, they have not perfected any easement on the state land.

Mr. Johnson said but if they have 25 feet already perfected on private land, we're going to end up with a 60-foot right-of-way, its just that we've only sold 35 feet of that.

Mr. Schultz said yes.

Ms. Sexton said on Friday there was a survey completed to determine that this road does look as if part of it is on state land and part is on private land. Sometimes these section line roads weren't laid out accurately but from the most recent survey Mr. Bugli had completed Friday it does appear as if this road is about half and half on each parcel.

Mr. McGrath said I think we are alright in going here because we are ultimately going to end up with a 60-foot right-of-way which is the standard. It is just going to be a question of what is ours and what is the county's. So I am comfortable with the motion.

A vote was taken on the motion on the floor. Motion carried unanimously.

806-9 METALLIFEROUS LEASE APPLICATION
 (Benefits: Common Schools)

Ms. Sexton said this application is for gold from applicant James Ebisch from Spokane, Washington. This is located in Lincoln County and follows our typical lease applications that come before the Board. There is a \$2,000 bond. The department has reviewed this application and recommends an annual rental of \$30 per acre for the first year, \$1 per acre for the second and third year, and \$250 per acre for the fourth and fifth years, and \$3 per acre per year for the years after. There will be a royalty rate of 5%

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gross values recommended. The lease copy is here for the Board purview. Ms. Sexton said she recommends approval of the lease with the attached stipulations.

Motion was made by Ms. McCulloch to approve the metalliferous lease application. Seconded by Mr. Morrison.

Mr. McGrath said is the \$2,000 bond a common bond we use for a lease bond? I understand it is not an operation bond.

Monte Mason, DNRC Minerals Management Bureau Chief, said yes, that's our starting base bond. We can adjust that upward at any time based on proposed operations.

Mr. McGrath said which I assume we'd do if they proposed an operation.

Mr. Mason said yes.

A vote was taken on the motion on the floor. Motion carried unanimously.

Motion to adjourn was made by Mr. Morrison. Seconded by Mr. McGrath.